No. 86 1811

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

**WILLIAM ANEST and PETER ANEST, on their own behalf and on behalf of all individuals similarly situated,**

*Petitioners,*

v.

**LAKE COUNTY, ILLINOIS, BOARD OF REVIEW OF LAKE COUNTY and AUSTIN DOUGLAS, ELLEN FURTKAMP, BERNARD VITEK, individually and as Members of the Board of Review of Lake County; ROBERT JASPER, individually and as Supervisor of Assessments; R.G. HOLTZ, G. KRISTIAN, A. PHILLIPS, H. PILLMAN, R. EARHART, UNO LARSON, IRENE DAMM, BETTY J. NIEMI, M. KARASENSKI, WM. SWANSON, TOM BARTELL, MAURICE DEWULF, C. GERSCHEFSKE, G. WASHBURN, WALTER LA BAC, PAT MORRIS, WM. BROWN and HERB HANF, individually and as Township Assessors,**

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL DISTRICT

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## QUESTION PRESENTED

Whether state taxing officials deprive taxpayers of due process of law when they raise the assessed valuations of the taxpayers' real property and intentionally withhold from the taxpayers any notice whatsoever of those increases, resulting in the taxpayers' payment of additional property taxes.

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| QUESTION PRESENTED | i |
| TABLE OF AUTHORITIES | iii |
| OPINIONS BELOW | 2 |
| JURISDICTION | 2 |
| CONSTITUTIONAL PROVISION INVOLVED | 2 |
| STATEMENT OF THE CASE | 3 |
| REASONS FOR GRANTING THE WRIT: | |
| I. | |
| THE DECISION BELOW IS IN DIRECT CONFLICT WITH EVERY RELEVANT DECISION OF THIS COURT | 5 |
| II. | |
| THE DECISION OF THE ILLINOIS APPELLATE COURT ON THE FEDERAL QUESTION INVOLVED HERE IS IN CONFLICT WITH THE DECISIONS OF OTHER STATE COURTS | 12 |
| CONCLUSION | 14 |

## APPENDIX

Opinion and Judgment of the Illinois Appellate Court, September 18, 1986 ..... A-1

Order of the Illinois Supreme Court, February 6, 1987 ..... A-8

Order of the Illinois Supreme Court, March 3, 1987 ..... A-9

Order of the Circuit Court of Lake County, June 14, 1985 ..... A-10

## TABLE OF AUTHORITIES

*Cases* PAGE

*Anderson v. Apostalakis*, 123 Ill.App.3d 507, 462 N.E.2d 1006 (1984) ..... 4

*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) ..... 10

*Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915) ..... 8

*Daniels v. Williams*, 474 U.S. ____, 106 S. Ct. 662 (1986) ..... 6

*Don S. Co., Inc. v. Roach*, 168 W. Va. 605, 285 S.E.2d 491 (1981) ..... 12

*Evergreen Helicopters, Inc. v. Commonwealth*, 516 A.2d 124 (Pa. Comm. 1986) ..... 12

*Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981) ..... 12

*Greene v. Lindsey*, 456 U.S. 444 (1982) ..... 8

*Hustace v. Kapuni*, 718 P.2d 1109 (Haw. App. 1986) ..... 12

*Lambert v. California*, 355 U.S. 225 (1957) .... 9

*Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) ..... 11

*Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1 (1978) ..... 9

*Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) ..... 6, 8, 9

*Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950) ..... 5, 6

*People ex rel. Carr v. Chicago Dock & Canal Co.*, 306 Ill. 399, 138 N.E. 214 (1923) ..... 9

*Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981) ..... 11

*Texaco, Inc. v. Short*, 454 U.S. 516 (1982) .... 10

*Constitutional Provisions*

United States Constitution, Fourteenth Amendment ..... 2

*Statutes*

Ill.Rev.Stat. ch. 85, §§1-101 *et seq.* ..... 3

Ill.Rev.Stat. ch. 120, ¶¶584, 589(5), 589.4 ..... 6

Ill.Rev.Stat. ch. 120, ¶¶589, 590.1 ..... 11

Ill.Rev.Stat. ch. 120, ¶¶675, 716 ..... 11

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*Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL DISTRICT

Petitioners William Anest and Peter Anest, on their own behalf and on behalf of all individuals similarly situated, pray that a writ of certiorari issue to review the opinion and judgment of the Appellate Court of Illinois, Second Judicial District, entered on September 18, 1986.*

* Pursuant to Supreme Court Rule 28.1, petitioners state that all of the parties to this case are listed in the caption and none is a corporation.

## OPINIONS BELOW

The opinion of the Illinois Appellate Court is reported at 147 Ill.App.3d 243, 497 N.E.2d 1327, and is set forth beginning at page A-1 of the Appendix. The order of the Supreme Court of Illinois denying the Petition for Leave to Appeal is set forth at page A-8 of the Appendix. The order of the Supreme Court of Illinois denying the Motion for Leave to File a Motion for Reconsideration is set forth at page A-9 of the Appendix. The unpublished order of the Circuit Court of Lake County is set forth at page A-10 of the Appendix.

## JURISDICTION

The order of the Supreme Court denying the Petition for Leave to Appeal was entered on February 6, 1987 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

## CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "[N]or shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

## STATEMENT OF THE CASE

Petitioners are real property owners and taxpayers in Lake County, Illinois. Respondents are various Lake County taxing officials and governmental entities. Petitioners allege that each year from 1979 to 1983, Respondents increased the assessed valuation of Petitioners' real property. Petitioners further allege that Respondents intentionally withheld notice that Petitioners' assessments had been increased, and did not even provide the notice required by Illinois statute. As a result of these increases in their assessments, Respondents compelled Petitioners to pay additional real property taxes. Finally, Petitioners allege that they did not learn of the increases in their assessments until long after they had paid the taxes and long after they had lost any opportunity to challenge the increases using Illinois statutory procedures.

Petitioners filed their class action complaint under 42 U.S.C. §1983, alleging that Respondents deprived them of due process of law by increasing their assessments and, consequently, their taxes, without giving them notice and an opportunity to challenge those increases. The trial court dismissed the complaint for failure to state a cause of action and because it found Petitioners' claims barred by Illinois' Local Governmental and Governmental Employees Tort Immunity Act, Ill.Rev.Stat. (1985), ch. 85, §§1-101, *et seq.* (A-10 - 11). Petitioners appealed. Although the Appellate Court expressly declined to base its ruling on the grounds articulated by the trial court (A-4), it nonetheless affirmed its decision.

The Appellate Court acknowledged Petitioners' allegation, necessarily taken as true on a motion to dismiss, that Respondents had not given Petitioners any notice of the

increases they had made in Petitioners' assessments (A-2). The Appellate Court further acknowledged that in an earlier decision (*Anderson v. Apostalakis*, 123 Ill.App.3d 507, 462 N.E.2d 1006 (1984)), it had held that the same increases Petitioners challenge here were invalid under Illinois law because they were made without notice (A-3, 6-7). Nevertheless, the Appellate Court held that Petitioners' complaint did not state a claim for violation of their right to due process because it was theoretically possible for Petitioners to have figured out for themselves that their assessments had been increased (A-5 - 6).

On February 6, 1987, the Illinois Supreme Court denied Petitioners leave to appeal and on March 3, 1987, it denied Petitioners' motion for leave to file a motion for reconsideration. Thus, the federal question has not only been in this case from the beginning, it is the only question upon which the Illinois courts ruled.

## REASONS FOR GRANTING THE WRIT

### I.

### THE DECISION BELOW IS IN DIRECT CONFLICT WITH EVERY RELEVANT DECISION OF THIS COURT.

The decision of the Illinois Appellate Court was based squarely and solely on its interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Appellate Court rendered its decision without giving even perfunctory consideration to a number of governing decisions of this Court. The issue presented by this Petition would be important for that reason alone. However, the issue presented by this Petition is also important because it affects a very large number of people (potentially every property taxpayer in Lake County, Illinois) and it involves conduct by taxing officials alleged to be intentional, systematic and county-wide for several years. Most importantly, this case involves conduct quite likely to be repeated because the Appellate Court's opinion actually gives taxing officials an incentive to disregard their obligation to give notice to taxpayers.

Adequate notice and an opportunity to be heard are, of course, the cornerstones of due process. But an individual's right to be heard is meaningless if that individual is not given notice that something has been done that he may want to protest, and the issue in this case is whether Petitioners had notice of the increases in their assessments sufficient to satisfy the Due Process Clause.

In *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 315 (1950), this Court set forth the standard against which notice must be measured:

> [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

In this case, Respondents did not give Petitioners *any* notice that their assessments had been increased, not even the notice required by Illinois law.

At the time the increases in question were made, Illinois law required that Respondents publish notice of increases in assessments like those involved here. Ill.Rev. Stat. (1983), ch. 120, ¶¶584, 589(5). In 1983, following this Court's decision in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), the statute was amended to require personal notice of assessment increases. Ill.Rev. Stat. (1985), ch. 120, ¶589.4. Respondents did not give Petitioners either kind of notice.

This is not a case about an isolated instance of carelessness or oversight, nor is it a case about minor, technical flaws, attributable to negligence or some emergency, in a notice actually given. The complaint alleges that Respondents increased assessments systematically and countywide for several years and intentionally refused to give Petitioners any notice of the increases. This is precisely the kind of conduct at which the Due Process Clause is directed:

> Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty or property. *E.g.*, *Davidson v. New Orleans*, 96 U.S. 97 (1878) (assessment of real estate).

*Daniels v. Williams*, 474 U.S., ____, ____, 106 S. Ct. 662, 665 (1986) (emphasis in original, additional citations omitted).

Notwithstanding the clarity of these principles, the Appellate Court held that Petitioners' complaint did not even state a cause of action. The court rested its decision entirely on the dubious *theoretical* possibility that Petitioners could have discovered the annual increases in their assessments despite Respondents' failure to give them the notice to which they were entitled. The Appellate Court observed that Illinois law requires that the assessed valuation of a taxpayer's property appear on his tax bill along with the applicable tax rates from the many local taxing districts entitled to tax the property, any applicable state or county-wide equalization factors, the taxpayer's resulting equalized assessment, and the tax itself. The Appellate Court conceded (A-5) that a taxpayer could not determine that his assessment had been increased even by carefully examining his tax bill alone. The taxpayer would have had to locate his tax bill from the previous year (if he had it), compare it to his current bill and, perhaps, thereby discover that the assessment of his property had been increased. For a number of reasons, all fully explained in decisions of this Court, this theoretical possibility of notice does not even approach the kind of notice required by the Due Process Clause. The Illinois Appellate Court dealt with these reasons, and the decisions of this Court in which they were explained, by ignoring them.

To begin with, the Appellate Court's holding depended on its observation that taxpayers could have learned of the increases in their assessments by digging out last year's tax bill and comparing it to the one they had just received, but many taxpayers could not have done even that. For example, in any case in which ownership of property was transferred during the year, whether through sale, gift, estate distribution or for any other reason, the new owner would not have had the previous year's tax bill

and could not possibly have made the comparison that the Appellate Court held, as a matter of law, he could have made. Presumably, other taxpayers had lost or destroyed their tax bills from the previous year—no law requires that they be maintained—and these taxpayers also could not have made the comparison. Even under the Appellate Court's own analysis, these taxpayers had no notice whatsoever of the increases in their assessments.

In *Greene v. Lindsey*, 456 U.S. 444 (1982), this Court invalidated, on due process grounds, a mechanism for giving tenants notice of forcible entry and detainer proceedings because many tenants were not getting the notices. By affirming the dismissal of their complaint, the Appellate Court deprived Petitioners of the opportunity to prove that they could not possibly do what the court summarily assumed that they could do.

Even assuming, *arguendo*, that Petitioners had their tax bills from the previous year, the Appellate Court's holding turned due process upside down. The Due Process Clause imposes the obligation to give notice on the state, and "a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation [to give sufficient notice]." *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 799 (1983). "It is not enough that the owners may by chance have notice. . . , [t]he law must require notice to them. . ." *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424 (1915), quoting *Stuart v. Palmer*, 74 N.Y. 183, 188. The Appellate Court's opinion in this case unconstitutionally shifted the burden of notice from the state to the individual taxpayer.

Additionally, the Appellate Court shifted the burden of notice from the state to the individual taxpayer in a case in which it was extremely difficult for the individual tax-

payer to overcome that burden. The tax bills that Petitioners received did not contain the previous year's assessment, refer the taxpayer to his tax bill from the previous year or even suggest the possibility that his assessment *might* have been increased. The tax bills are a confusing hodgepodge of assessed valuations, equalization factors, equalized valuations and tax rates, difficult for all but the most sophisticated taxpayer to decipher on his own. The Appellate Court ignored this Court's directive that notice must be particularly clear when it is going to "thousands of [taxpayers] of various levels of education, experience and resources." *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 15 n.15 (1978). *And see, Mennonite Board of Missions v. Adams*, 462 U.S. 791, 799 (1983) ("particularly extensive efforts to provide notice may often be required when the State is aware of a party's inexperience or incompetence.").

Moreover, under Illinois law, assessments are normally increased only every fourth year, *People ex rel. Carr v. Chicago Dock & Canal Co.*, 306 Ill. 399, 138 N.E. 214 (1923), so taxpayers had no reason to suspect increases in their assessments. Finally, of course, taxpayers had a right to rely on the fact that Illinois law required publication notice of any increases so, for that reason as well, they had no reason to suspect that their assessments had been increased. Thus, "circumstances which might move one to inquire . . . are completely lacking." *Lambert v. California*, 355 U.S. 225, 229 (1957).

According to the Appellate Court, none of this matters; due process is satisfied because it was *theoretically* possible for an ordinary taxpayer to overcome all these obstacles and figure out for himself that his assessment had been increased. In *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1 (1978), this Court invalidated, again on

due process grounds, a notice that informed people that their utility service might be cut off but did not disclose the procedure by which a potential cut-off could be challenged. In this case, Illinois statutory law required that taxpayers be given notice that their assessments had been increased and that they had an administrative remedy to challenge those increases. Ignoring the teaching of *Craft*, the Appellate Court held that the tax bills were an adequate substitute for Respondents' intentional failure to give the required notice, despite the fact that the bills did not even disclose that something had been done which the taxpayer might want to protest, much less that there was a procedure by which he could make such a protest.

Petitioners do not contend that their due process rights were violated merely because Respondents failed to give them the notice required by an Illinois statute. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). As this Court has frequently held, citizens have an obligation to know the law, and "[t]his is especially the case with respect to those statutes relating to the taxation . . . of land." *Texaco, Inc. v. Short*, 454 U.S. 516, 532 n.25 (1982). The irony, of course, is that in a case like this one, a taxpayer's knowledge of the law becomes a disadvantage. Those citizens who were aware that the law required Respondents to give them notice of increases in their assessments were lulled into a dangerously false sense of security when they did not get such a notice. Indeed, Respondents may well have counted on that lulling when they made their increases in Petitioners' assessments. While the violation of Illinois law, standing alone, does not establish a Constitutional violation, it is relevant to the question of whether or not Petitioners received sufficient notice to satisfy due process.

The Appellate Court similarly ignored a second due process violation, distinct from but arising out of Respondents' failure to give notice to Petitioners. Even assuming, *arguendo*, that the tax bills alone constituted sufficient notice to satisfy due process, Petitioners were still deprived of due process because, by the time they received their tax bills, they had lost the right to utilize the only effective state procedure available to them to contest increases in their assessments.

Had Respondents given Petitioners the notice required by Illinois statute, Petitioners would have had an opportunity to challenge Respondents' increases in their assessments, *prior to paying the tax*, before the Lake County Board of Review and the Property Tax Appeal Board. Ill. Rev.Stat. (1985), ch. 120, ¶¶589, 590.1. By the time the tax bills went out, however, these remedies were no longer available to Petitioners. If, in the very brief time they had after receiving their tax bills but before they had to pay the taxes, Petitioners had discovered Respondents' increases in their assessments, they could have filed specific tax objections in the Lake County Circuit Court. Ill.Rev.Stat. (1985), ch. 120, ¶¶675, 716. To do so, however, Petitioners would first have had to pay their taxes under protest. If the protests were successful, Petitioners would have received refunds, without interest, perhaps years later. *See generally, Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981). Petitioners allege, of course, that they did not realize that their assessments had been increased until long after it was too late to utilize even the tax objection procedure.

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), this Court held that citizens have a protected property interest in procedures that the states set up to provide redress for particular grievances and that state officials violate due process when they deny those procedures to

a citizen if there is no adequate alternative procedure available. That is precisely what Respondents did here, and in so doing they denied Petitioners due process of law.

## II.

## THE DECISION OF THE ILLINOIS APPELLATE COURT ON THE FEDERAL QUESTION INVOLVED HERE IS IN CONFLICT WITH THE DECISIONS OF OTHER STATE COURTS.

In *Fair Assessment in Real Estate Ass'n. v. McNary*, 454 U.S. 100 (1981), this Court held that, as a matter of comity, §1983 actions challenging state tax administration must be brought in the state courts. This Court noted that although taxpayers could not bring their suits in federal court, they "may ultimately seek review of the state decisions in this Court." *Id.* at 116. This Court is therefore obligated to resolve conflicts in state court interpretations of the Constitution on questions involving state taxes. The decision of the Illinois Appellate Court in this case is in conflict with the decisions of several other state courts, all of which have found due process violations in cases involving local tax officials' failure to comply with statutory notice provisions. *Evergreen Helicopters, Inc. v. Commonwealth*, 516 A.2d 124 (Pa. Comm. 1986); *Don S. Co., Inc. v. Roach*, 168 W. Va. 605, 285 S.E.2d 491 (1981). *And see, Hustace v. Kapuni*, 718 P.2d 1109 (Haw. App. 1986).

Nevertheless, Petitioners acknowledge that this Court cannot possibly review every erroneous state court interpretation of the federal Constitution in a tax case. For several reasons, however, this case is deserving of this Court's review. First, this case directly involves the rights of hundreds of thousands of taxpaying citizens of Lake

County, Illinois. There has never been any dispute that these taxpayers have no Illinois remedies available to them. If the decision of the Illinois Appellate Court is left to stand, these taxpayers will have been compelled to pay additional taxes without any hearing whatsoever on their claim that they received no notice of the assessment increases on which the additional taxes were based.

Second, this is a case involving allegations of flagrantly unlawful conduct by state taxing officials. The complaint alleges a county-wide, systematic and intentional scheme by the state tax officials to increase assessments (and, consequently, tax revenue) while depriving the taxpaying citizens of notice of those increases. It is bad enough that the Illinois courts have permitted this conduct to go unreviewed. This Court's refusal to review the Appellate Court's decision would not just hammer the final nail into Petitioners' coffins, it would leave in place an interpretation of the United States Constitution that actually provides local tax officials with an incentive to ignore their obligations to give notice to taxpayers because it holds that taxpayers have no redress if and when they discover what their local officials have done without notice.

Finally, although they do so reluctantly, Petitioners are obligated to call this Court's attention to the cavalier treatment of their serious federal claim in the state courts of Illinois. The trial court dismissed their claim on the ground that a state tort immunity statute insulated Respondents from federal civil rights liability (a patently ludicrous holding) and, without explanation, for failure to state a claim. The Appellate Court upheld the dismissal without making even a perfunctory attempt to reconcile or distinguish, indeed without even mentioning, controlling decisions of this Court. Despite all of this and despite the fact that an obviously serious constitutional claim had

been dismissed at the pleadings stage in a case in which the complaining taxpayers had no other avenue of redress open, the Illinois Supreme Court twice refused to hear Petitioners' appeal.

This case involves only an obviously erroneous interpretation of the Due Process Clause. The Illinois courts did not rely upon, or even mention, an independent state ground for the decision. If the *Fair Assessment* decision is to work, this Court must occasionally review a case like this one.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: May 7, 1987

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# APPENDIX

[Filed September 18, 1986]
No. 2-85-507

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

WILLIAM ANEST and PETER ANEST, on their own behalf and on behalf of all individuals similarly situated,

*Plaintiffs-Appellants,*

*v.*

LAKE COUNTY, ILLINOIS, BOARD OF REVIEW OF LAKE COUNTY and AUSTIN DOUGLAS, ELLEN FURTKAMP, BERNARD VITEK, individually and as Members of the Board of Review of Lake County; ROBERT JASPER, individually and as Supervisor of Assessments; R.G. HOLTZ, G. KRISTIAN, A. PHILLIPS, H. PILLMAN, R. EARHART, UNO LARSON, IRENE DAMM, BETTY J. NIEMI, M. KARASENSKI, WM. SWANSON, TOM BARTELL, MAURICE DEWULF, C. GERSCHEFSKE, G. WASHBURN, WALTER LA BAC, PAT MORRIS, WM. BROWN and HERB HANF, individually and as Township Assessors,

*Defendants-Appellees.*

Appeal from the Circuit Court for the 19th Judicial Circuit, Lake County, Illinois.
Honorable **Ward S. Arnold**, Judge Presiding.

JUSTICE HOPF delivered the opinion of the court:

Plaintiffs, William and Peter Anest (taxpayers), appeal from the order of the trial court of Lake County dismissing their complaint on grounds that (1) the complaint failed to state a cause of action, and (2) plaintiffs' action was barred by the Local Governmental and Governmental Employees Tort Immunity Act. Ill. Rev. Stat. 1983, ch. 85, par. 1-101 *et seq.*

Plaintiffs brought a class action suit, on behalf of all taxpayers of Lake County, against Lake County; the members of the Lake County Board of Review (Board of Review), both individually and as members of the Board; the Lake County Supervisor of Assessments; and the various Lake County Township Assessors, both individually and in their official capacities. The complaint alleges that for several consecutive years the defendants increased the assessed valuation of taxpayers' real property without notice to taxpayers, and that this conduct violated plaintiffs' right to due process. Pursuant to section 1983 of the Civil Rights Act of 1871 (42 U.S.C.A. sec. 1983 (West 1981)), plaintiffs seek actual and consequential damages plus interest, and costs and attorney fees.

Defendants moved to dismiss the complaint on grounds that it failed to state a cause of action because it did not allege the deprivation of any constitutional rights. Defendants also asserted the following defenses in bar to plaintiffs' suit pursuant to section 2-619 of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, par. 2-619): the trial court lacked subject matter jurisdiction to hear the case; the action was barred by the *res judicata* effect of the judgments and orders for sale entered upon the collectors' application for judgment in the contested tax years; the assessment officials named in the complaint enjoyed qualified immunity from a section 1983 suit because the constitutional right they allegedly violated was not clearly established at the time of the violation; and the taxpayers lacked standing to sue certain township assessors because the complaint did not allege ownership of any real property in those townships.

The trial court found that neither taxpayers' fourteenth amendment constitutional rights, nor their civil rights under section 1983, were implicated by the complaint. The court further found that the tax assessment officials and the members of the Board of Review were immune to plaintiffs' suit pursuant to sections 1-202 and 2-204 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (Ill. Rev. Stat. 1983, ch. 85, pars. 1-202, 2-204). The complaint was dismissed as to all defendants.

As a preliminary matter, it should be noted that this case arises from the same facts which resulted in this court's opinion in *Anderson v. Apostalakis* (1984), 123 Ill. App. 3d 507, 462 N.E.2d 1006. There, the initial 1980 assessment figure was increased by the amount of the 1979 equalization factor. Thus, what appeared to taxpayers to be the initial 1980 assessment was actually the initial 1980 figure plus the equalization factor.

Pursuant to the tax objection procedure set forth in section 194(a) of the Revenue Act of 1939 (Revenue Code) (Ill. Rev. Stat. 1981, ch. 120, par. 675(a)), taxpayers in *Apostalakis* paid the taxes resulting from the 1980 assessments under protest. Subsequently, they filed the requisite objection at the collector's application for judgment, alleging that they were given no notice of the increased assessments as required by section 108(5) of the Revenue Code (Ill. Rev. Stat. 1981, ch. 120, par. 589(5)). Defendants contended that the publication of proposed 1979 equalization factors provided sufficient notice that the 1980 tax assessment figure would include the amount of the 1979 equalizer. This court held that publication of equalization factors alone did not constitute notice for purposes of the statute. Accordingly, the challenged Lake County assessment increases were invalid. In the instant case, plaintiffs assert that the practice found to violate the Revenue Code in *Apostalakis* also violated their constitutional right to due process.

The trial court dismissed the complaint in the present case after finding that it failed to allege a constitutional

violation and concluding that the suit was barred by the Local Governmental and Governmental Employees Tort Immunity Act. (Ill. Rev. Stat. 1983, ch. 85, par. 1-101 *et seq.*) We find it unnecessary, however, to reach either of those issues.

It is the judgment of the lower court that is on appeal to a court of review, and not whatever else the lower court may have said. (*Material Service Corp. v. Department of Revenue* (1983), 98 Ill. 2d 382, 387, 457 N.E.2d 9; *Rabus v. Calcari* (1959), 16 Ill. 2d 99, 156 N.E.2d 567.) A reviewing court is not bound by the reasons given by the trial court for its judgment. (*Citizens Utilities Co. of Illinois v. O'Connor* (1984), 121 Ill. App. 3d 533, 459 N.E. 2d 682.) The lower court judgment may be sustained upon any ground warranted in the record, regardless of whether it was relied on by the trial court. (*Material Service Corp. v. Department of Revenue* (1983), 98 Ill. 2d 382, 387, 457 N.E.2d 9; *Anderson v. Sutter* (1983), 119 Ill. App. 3d 1070, 458 N.E.2d 39.) The reasons given by a trial court for an order, or the findings on which an order is based, are not material if the order is correct. (*Board of Managers v. Chase Manhattan Bank* (1983), 116 Ill. App. 3d 690, 452 N.E.2d 382.) In the case at hand we find that the trial court correctly ordered the dismissal of the complaint. We do not, however, rely on the reasons stated by the lower court. Rather, we conclude after reviewing the record that plaintiffs received notice of increases in their assessments sufficient to satisfy the requirements of due process. This conclusion warrants affirmance of the trial court judgment.

Our supreme court in *Dietman v. Hunter* (1955), 5 Ill. 2d 486, 489, 126 N.E.2d 22, set forth the parameters of due process in tax assessment proceedings as follows:

> "Due process requires that the property owner be given notice and an opportunity to be heard upon the valuation of his property at some point in the taxing process before his liability to pay the tax becomes conclusively established."

Actual notice of tax assessment increases is sufficient to satisfy due process. *Andrews v. Foxworthy* (1978), 71 Ill. 2d 13, 22, 373 N.E.2d 1332; *People ex rel. Ball v. Anderson* (1961), 21 Ill. 2d 396, 400-01, 172 N.E.2d 760.) Here, the taxpayers had actual notice when they received their tax bills.

The annual tax bills mailed by the county collector informed Lake County taxpayers that their property assessments had been increased during each tax year in question here. Section 190 of the Revenue Code (Ill. Rev. Stat. 1981, ch. 120, par. 671) specifically requires that a statement be included with each tax bill and that: "In all counties the statement shall also set out *the assessment of the property involved*, the equalization factors imposed by the county and by the Department, and the equalized assessment resulting from the application of the equalization factors to the basic assessment." (Emphasis added.) (Ill. Rev. Stat. 1981, ch. 120, par. 671.) (The 1979 and 1983 statutes also require a statement of the assessment of each piece of property taxed.) Section 190 further requires that the tax bills be mailed to property owners at least 30 days before the taxes are due. (Ill. Rev. Stat. 1981, ch. 120, par. 671.) Taxpayers have nowhere alleged that they did not receive either their tax bills, or the statement called for by the statute. Accordingly, the taxpayers were notified of current assessments upon receipt of their tax bills. A comparison of those bills with the previous year's bills would have shown immediately any increase in assessment. At that point, the taxpayers had at their disposal the tax objection procedure as a remedy.

Taxpayers object that it is overly burdensome to expect the taxpayer to assume the responsibility for comparing assessment figures on his current tax bill with the same figures on the bill from the year before. Their intimation that taxpayers must "carefully scrutinize their confusing and highly complicated tax bills, then compare them with the prior years' bills to try to determine whether their rights are being violated by the taxing authorities," needlessly exaggerates an uncomplicated task.

The taxpayer need look for only one figure on each statement: the asessed value for the present year and the assessed value for the previous year. We do not find this simple comparison so onerous as to relieve the taxpayer of all burden.

In addition to actual notice, taxpayers had an opportunity to be heard pursuant to the statutory tax objection process. By the simple expedient of paying their taxes under protest and filing an objection at the county collector's application for judgment, taxpayers would have been assured of a hearing. While taxpayers normally protest assessments before the Board of Review during the customary assessment cycle (Ill. Rev. Stat. 1981, ch. 120, par. 589), failure to exhaust that administrative remedy would not have been a defense in this case at the tax objection proceeding. *Marty v. Brown* (1975), 34 Ill. App. 3d 660, 338 N.E.2d 920.

In *Marty* the first notice taxpayers had that their property had been placed on the assessment rolls was a tax bill received long after the Board of Review had closed its books for the current tax year. When taxpayers complained regarding lack of notice, the collector argued that they should have exhausted their administrative remedies. The court found no merit in this argument since taxpayers received notice too late to utilize those remedies. Likewise, taxpayers in the instant case had actual notice of increases in assessments only when they received their tax bills. Failure to appeal to the Board of Review during the tax assessment cycle would not have barred their tax objections. We conclude that taxpayers had actual notice and an opportunity to be heard regarding their assessment increases sufficient to satisfy the requirements of due process. *Dietman v. Hunter* (1955), 5 Ill. 2d 486, 489, 126 N.E.2d 22.

We acknowledge that in *Anderson v. Apostalakis* (1984), 123 Ill. App. 3d 507, 462 N.E.2d 1006, we found that the same assessment increases challenged here were invalid because they had been imposed without sufficient notice.

However, in *Apostalakis*, plaintiffs complained of a statutory, rather than a due process, violation. Furthermore, the precise issue before us in *Apostalakis* was whether publication of proposed 1979 equalization factors provided sufficient notice that the 1980 assessment figure would include the amount of the 1979 equalizer. We concluded that such publication did not constitute notice for purposes of the statute. We did not consider whether the tax bill might provide notice either under the statute or under due process. Accordingly, *Apostalakis* does not control the case now before us.

Since we have decided that taxpayers did not adequately allege a violation of their due process right to notice and hearing, we need not address the other issues raised by the parties. Based on the reasoning set forth above the judgment of the circuit court of Lake County is affirmed.

AFFIRMED.

NASH, P.J., and SCHNAKE, J., concur.

*(Letterhead Of)*

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

February 6, 1987

Mr. Robert F. Coleman
Attorney at Law
600 Three First National Plaza
Chicago, IL 60602

No. 64255—William Anest, et al., etc., petitioners, v. Lake County, Illinois, et al., etc., respondents. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on March 2, 1987.

*(Letterhead Of)*

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706

March 3, 1987

Mr. Eugene J. Schiltz
Robert F. Coleman & Associates
600 Three First National Plaza
Chicago, IL 60602

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 64255—William Anest, et al., etc., petitioners, v. Lake County, Illinois, et al., etc., respondents.

The motion by petitioners for leave to file a motion for reconsideration of the order denying petition for leave to appeal is *denied.*

JH:sdl

cc: Barry J. Freeman
Marvin G. Freeman
Pollack & Weis
Thomas W. Gooch
Soffietti, Johnson, Teegan & Phillips
SA/Lake
Barry L. Kroll
Richard Cowan
Conzelman, Schultz & Mullen
Edward R. Tomkowiak

IN THE CIRCUIT COURT
OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

No. 84 L 951

WILLIAM ANEST and PETER ANEST, on their own behalf and on behalf of all individuals similarly situated,

*Plaintiffs,*

*vs.*

LAKE COUNTY, ILLINOIS, BOARD OF REVIEW OF LAKE COUNTY and AUSTIN DOUGLAS, ELLEN FURTKAMP, BERNARD VITEK, individually and as Members of the Board of Review of Lake County; ROBERT JASPER, individually and as Supervisor of Assessments; R.G. HOLTZ, G. KRISTIAN, A. PHILLIPS, H. PILLMAN, R. EARHART, UNO LARSON, IRENE DAMM, BETTY J. NIEMI, M. KARASENSKI, WM. SWANSON, TOM BARTELL, MAURICE DEWULF, C. GERSCHEFSKE, G. WASHBURN, WALTER LA BAC, PAT MORRIS, WM. BROWN and HERB HANG (sic), individually and as Township Assessors,

*Defendants.*

ORDER

This cause coming on for hearing on Defendant's various motions to dismiss, the Court having perused the pleadings and entertained arguments of counsel and being fully advised in the premises, makes the following findings:

A. That violation of Plaintiff's rights herein, if any, do not involve constitutional rights under the Fourteenth Amendment to the United States Constitution or civil rights under 42 U.S.C., Section 1983.

B. That Defendant Township Assessors, both individually and in their capacity as Assessors are not liable for any injury to Plaintiffs pursuant to Chapter 85, Sections 1-202 and 2-204.

C. That Defendants Austin Douglas, Ellen Furtkamp, Bernard Vitek and Robert Jasper, both individually and as Members of the Lake County Board of Review and/or Supervisor of Assessments are not liable for any injury to Plaintiffs pursuant to Chapter 85, Sections 1-202 and 2-204.

WHEREFORE, IT IS ORDERED:

1. That because Plaintiffs have no standing to maintain this action under either theory of relief as stated in their complaint and amended complaint, Defendant Lake County's Motion to Dismiss shall be and is hereby granted.

2. That the Motions to Dismiss of the remaining Defendants, in their individual and corporate capacities are granted, and Plaintiff's complaint as to them is dismissed.

ENTER:

/s/ WARD S. ARNOLD
Judge

DATE: June 13, 1985